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RE: Model Provincial Rule – Trade Repositories and Derivatives Data Reporting

We are pleased to offer comments on the Model Provincial Rule – Trade Repositories and Derivatives Data Reporting (the "TR Rule") published on December 6, 2012 by the Canadian Securities Administrators ("CSA").

Stewart McKelvey is a regional Canadian law firm with offices in each of the Atlantic Canadian Provinces. Our comments are those of individual lawyers in Stewart McKelvey's securities practice group and do not necessarily represent the views of Stewart McKelvey, other Stewart McKelvey lawyers or our clients.

We acknowledge the purpose of the TR Rule being to improve transparency in the derivatives market to regulators and the public and we recognize the benefit to be achieved by requiring certain counterparties whose principal place of business is located in a province to be required to report derivative trades in accordance with the TR Rule. That said, the somewhat unique position that the New Brunswick and Nova Scotia corporate jurisdictions play in the Canadian and global corporate landscape, be that as a result of the availability of unlimited liability companies, the lack of a Canadian resident director requirements or otherwise, has resulted in there being a large number of companies incorporated in one of these two provinces that have no place of business in the province or, in many cases, elsewhere in Canada. In most cases these companies are part of large, principally non-Canadian based, corporate groups.

Definition of "local counterparty"

Under the TR Rule a "local counterparty" will be subject to trade reporting with respect to any derivative transaction it enters into.

Paragraph (b) of the definition of local counterparty includes any person or company that is *organized under the laws of a province* or that has its head office in a province.

Paragraph (f) of the definition will operate to include any subsidiary of a person or company that is organized under the laws of a province.

We represent a large number of companies that are organized under New Brunswick or Nova Scotia law but have no actual presence or business in Canada. The effect of these aspects of the definition will be to bring into the Canadian reporting regime numerous companies that conduct no business and, in particular, no derivative trading activities, in Canada. For example, a New Brunswick or Nova Scotia incorporated company that carries on no business in Canada, has no management present in Canada and does not carry out any aspect of a trade in a derivative in Canada, will, along with all of its subsidiaries wherever located, be required to report trades under the TR Rule. This notwithstanding that it may be reporting such trades in the jurisdiction where it actually carries on business or conducts such trades.

With respect, we disagree with the Committee's position expressed in the explanatory notes accompanying the TR Rule to the effect that the reporting of derivative transaction data by market participants that are located in a foreign jurisdiction but whose derivatives trading activities trigger reporting requirements under the TR Rule is appropriate and is not an unnecessary burden. We acknowledge that for companies who have an actual presence in Canada the obligation to report trades may be a reasonable requirement. However imposing reporting obligations on all companies incorporated in the jurisdictions regardless of where they carry on business, regardless of where they carry out their derivative trading activities and regardless of their reporting obligations in the jurisdictions from which they carry on business or conduct such trades, will be seen by such companies as an unexpected and unnecessary expansion of Canadian securities regulatory regime with an accompanying increase in compliance costs and unnecessary duplication of regulation.

We note with interest that while a company that is incorporated in a province with no other activity in Canada is subject to reporting requirements, a company incorporated outside Canada that has substantial business activities and assets in Canada would not necessarily be subject to a reporting requirement under the TR Rule.

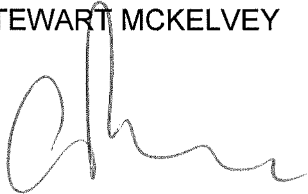
We suggest that paragraph (e) of the definition of "local counterparty" will on its own provide Canadian regulators and the Canadian public with sufficient insight and transparency into the Canadian derivatives market. We understand the likely policy reasons for extending the definition to include resident individuals (paragraph (a)), reporting issuers (paragraph (c)) and registrants (paragraph (d)) since such criteria all indicate an actual presence or activity in Canada. Incorporation does not, in and of itself, demonstrate any actual presence or activity in Canada sufficient to justify the cost of compliance with the TR Rule.

Consequently we recommend that the TR Rule be amended to remove the reporting obligation that arises solely as a result of incorporation.

We thank you for allowing us the opportunity to comment on the proposed Model Rule. Please contact the undersigned at the contact details provided below if the CSA members would like further elaboration of our comments.

Yours truly,

STEWART MCKELVEY



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